

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSE ALFREDO HERRERA,

CASE NO.: 06-13583

Petitioner,

v.

HONORABLE PAUL V. GADOLA
U.S. DISTRICT JUDGE

MILLCENT WARREN,

Respondent.

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**ORDER ACCEPTING AND ADOPTING THE
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

This is a habeas corpus action, brought pursuant to 28 U.S.C. § 2254. Before the Court is Petitioner's petition for a writ of habeas corpus, filed on August 10, 2006, and the Report and Recommendation of Magistrate Judge Paul J. Komives, filed on August 22, 2007. The magistrate judge's report and recommendation recommends that this Court deny Petitioner's motion. The Magistrate Judge also notified the parties that any objections must be filed within ten days of service. Petitioner filed objections on September 12, 2007. Respondent did not file a response.

The Court's standard of review for a magistrate judge's Report and Recommendation depends upon whether a party files objections. If a party does not object to the Report and Recommendation, the Court does not need to conduct a review by any standard. *See Lardie v. Birkett*, 221 F. Supp. 2d 806, 807 (E.D. Mich. 2002) (Gadola, J.). If a party does object to portions of the Report and Recommendation, the Court reviews those portions *de novo*. *Lardie*, 221 F. Supp. 2d at 807. The Federal Rules of Civil Procedure dictate this standard of review in Rule 72(b), which states, in relevant part:

The district judge to whom the case is assigned shall make a *de novo* determination upon the record, or after additional evidence, or any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

Fed. R. Civ. P. 72(b).

Here, because Petitioner filed objections as to each claim presented, this Court reviews *de novo* those portions to which an objection has been made. *See Lardie*, 221 F. Supp. 2d at 807. *De novo* review in these circumstances requires at least a review of the evidence before the magistrate judge; the Court may not act solely on the basis of a magistrate judge's Report and Recommendation. *See* 12 Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d § 3070.2 (1997); *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court may supplement the record by entertaining additional evidence, but is not required to do so. 12 Wright, Federal Practice § 3070.2. After reviewing the evidence, the Court is free to accept, reject, or modify the findings or recommendations of the magistrate judge. *See Lardie*, 221 F. Supp. 2d at 807. If the Court accepts a Report and Recommendation, the Court is not required to state with specificity what it reviewed; it is sufficient for the Court to state that it engaged in a *de novo* review of the record and adopts the Report and Recommendation. *See id*; 12 Wright, Federal Practice § 3070.2.

Therefore, in accordance with the requisite *de novo* review, the Court has reviewed the claims and evidence that were before Magistrate Judge Komives. After such a review the Court

finds that Report and Recommendation prepared by the magistrate judge is factually sound and legally correct.

ACCORDINGLY, IT IS HEREBY ORDERED that the Report and Recommendation [docket entry #19] is **ACCEPTED** and **ADOPTED** as the opinion of this Court.

IT IS FURTHER ORDERED that Petitioner's petition for writ of habeas corpus [docket entry #1] is **DENIED**.

SO ORDERED.

Dated: October 31, 2007

s/Paul V. Gadola
HONORABLE PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that on November 1, 2007, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

William C. Campbell, and I
hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Jose Herrera.

s/Ruth A. Brissaud
Ruth A. Brissaud, Case Manager
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